

EXECUTIVE BRANCH OF THE APSÁALOOKE NATION

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Crow Country

Carl E. Venne, Chairman
Cedric Black Eagle, Vice-Chairman
Andrew Old Elk, Secretary
Darren Old Coyote, Vice-Secretary

April 9, 2007

Senator Greg Lind, Chair
Senate Committee on Natural Resources and Energy
PO Box 200500
Helena, MT 59620-0500

Dear Senator Lind:

I am writing to register strong objection to HB 330, the bill creating the Montana Clean Renewable Energy Bond Act. The bill omits tribal governments from those eligible to participate, and it invites other governments to intrude on tribal sovereignty and economic opportunity. We ask for two amendments to the bill, and if the bill is not amended, we ask that your committee table it.

The first amendment we propose would simply add tribal governments, and the political subdivisions thereof, to the list of governments eligible to issue bonds and develop projects. The second amendment would give tribal governments priority for projects within their territories; that is, other governments could not operate within reservation areas without tribal consent, and tribal governments would have the first opportunity for such projects. The programs envisioned by the Federal Energy Tax Incentive Act could obviously be critical to tribal economic development.

The current bill is seriously flawed in that it does not recognize and protect the rights of tribes. Under the terms of the bill, another government could acquire funding and build a project on land within an Indian reservation, thereby unfairly competing with tribal government needs and opportunities, as well as creating additional burdens on tribal administrations.

This bill could encourage the border city of Hardin, for example, to raise funds and construct projects on fee land (and possibly even on individual allottee trust lands) on the Crow Reservation, raising a number of legal problems and subverting the primary jurisdiction of the Crow Tribe over lands within the boundaries of the reservation. The court case of "who owns the wind" will be a complicated one, and using state power to unfairly handicap the Tribe in its own efforts toward energy and economic development is inappropriate. In addition, the bill would make further inroads on tribal and federal rights while drawing down federal programs and funds for which tribes should have priority.

While the bill correctly acknowledges that tribal governments, along with other governmental bodies, are included as qualified issuers of bonds under the federal Energy Tax Incentives Act of 2005 ("Federal Act"), the rationale for the bill entirely omits tribal governments as among the governmental entities that are interested in issuing such bonds ("Whereas, several Montana *cities, towns, and counties* have expressed a desire to issue clean renewable energy bonds and to acquire and construct qualified projects under the Federal Act . . .").

It is clearly wrong to allow other governments precedence over tribal governments in this manner. Furthermore, tribes are responsible for environmental and other regulatory frameworks on their reservations, and the bill does not take this fact into account.

This complaint may seem somewhat late to you; however, procedural irregularities have kept us from making an effective objection earlier. When we first became aware late in March that the bill omitted tribal governments, the bill was tabled in House Appropriations. It was lifted from the table, then missed the deadline for appropriations bills and was listed as "probably dead." After that, however, it became a revenue bill and passed through the House.

You may have other concerns about the motivations behind the bill and how, as a practical matter, it would work to have cities, tribes, counties, and even school districts competing for funding and projects under the bill. Our primary concern however is with protecting tribal rights. Numerous publications from the National Conference of State Legislators stress the importance of government-to-government relationships between state and tribal governments, especially in dealing with the complexities of checkerboard land ownership on Indian reservations. We would appreciate the involvement of tribal representatives and their concerns in future discussions over development issues that concern them so directly.

With the inclusion of the aforementioned amendments to include tribal governments and protect their rights, we would support the bill. Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Carl E. Venne'.

Carl E. Venne
Chairman, Crow Tribe